Original Special Conditions from 29 July 2005 ROD

(A) Within 20 days of the completion of intake installation work in the Mattaponi River, the permittee shall remove all temporary sheetpiling and restore pre-construction river bottom contours at the work site and dispose of any excess dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(B) Within 20 days of the completion of pipeline installation work not involving directional drilling, the permittee shall remove all temporary fills and restore pre-construction stream and wetland substrate contours at each work site and dispose of any excess excavated/dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(C) The permittee shall be responsible for the successful execution of the Wetland, Stream and Riparian Corridor, and Fish and Wildlife Habitat Mitigation Components of the permittee's proffered mitigation proposal conceptually described in a report titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, as specified in the following conditions (D) through (I). The mitigation construction work (grading, planting, etc.) shall be completed prior to commencement of raw water withdrawals from the Mattaponi River.

(D) The permittee shall be responsible for the successful restoration and/or creation of 806 acres of freshwater wetland complexes consistent with the above-referenced June 2004 plan. Any deviations which would result in lesser areas of successful wetland mitigation must be approved in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality.

Special Conditions Included in 24 October 2005 Proffered Permit
changes highlighted in **bold typeface**

(A) Within 20 days of the completion of intake installation work in the Mattaponi River, the permittee shall remove all temporary sheetpiling and restore pre-construction river bottom contours at the work site and dispose of any excess dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(B) Within 20 days of the completion of pipeline installation work not involving directional drilling, the permittee shall remove all temporary fills and restore pre-construction stream and wetland substrate contours at each work site and dispose of any excess excavated/dredged material at an upland location where it will be suitably retained so as to prevent its reentry into any waterbody or wetland.

(C) The permittee shall be responsible for the successful execution of the Wetland, Stream and Riparian Corridor, and Fish and Wildlife Habitat Mitigation Components of the permittee's proffered mitigation proposal conceptually described in a report titled "King William Reservoir Project Reservoir Mitigation Plan", prepared by Malcolm Pirnie, dated June 2004, as specified in the following conditions (D) through (I). The mitigation construction work (grading, planting, etc.) shall be completed **to the written satisfaction of the U.S. Army Corps of Engineers** prior to the permittee's commencement of raw water withdrawals from the Mattaponi River.

(D) The permittee shall be responsible for the successful restoration and/or creation of 806 acres of freshwater wetland complexes consistent with the above-referenced June 2004 plan. Any deviations **from the June 2004 proffered wetland mitigation proposal** would have to be approved **in advance** in writing by the Corps of Engineers in consultation with an Interagency Mitigation Team to include the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. **The Final Detailed Mitigation Plan should prioritize utilization of mitigation sites in the York River watershed to the maximum extent practicable.**

(E) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed wetlands mitigation plan, for review and written comments by the Interagency Mitigation Team, and approval the Corps prior to construction**.** The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein, or disturbance of any wetland mitigation site, until the final detailed wetlands mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (F) below include the following items at a minimum:

a) grading and planting plans for each wetland restoration/creation site, to include an appropriate mix of native species, and target success criteria;
b) erosion control measure installation and removal plans for each wetland restoration/creation site;

c) preservation plans for each wetland restoration/creation site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
d) financial assurances for the successful completion of the minimum required wetland restoration/creation work; and
e) plans for control of invasive species at the wetland restoration/creation sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(F) The permittee shall monitor each wetland mitigation site over a 20-year period beginning with completion of the first growing season for each wetland creation/restoration site upon which grading has occurred. The permittee shall be required to monitor each site for a maximum of nine (9) times within the 20-year period in accordance with the above-referenced June 2004 plan. Timing of monitoring report preparation and submittal will be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The U.S. Army Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(E) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed wetlands mitigation plan for review and **written approval by the Corps in consultation with the Interagency Mitigation Team**. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein, or disturbance of any wetland mitigation site, until the final detailed wetlands mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (F) below include the following items at a minimum:

a) grading and planting plans for each wetland restoration/creation site, to include an appropriate mix of native species, and target success criteria;
b) erosion control measure installation and removal plans for each wetland restoration/creation site;

c) preservation plans for each wetland restoration/creation site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
d) financial assurances for the successful completion of the minimum required wetland restoration/creation work; and
e) plans for control of invasive species at the wetland restoration/creation sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(F) The permittee shall monitor each wetland mitigation site over a 20-year period beginning with completion of the first growing season for each wetland creation/restoration site upon which grading has occurred. The permittee shall be required to monitor each site for a maximum of nine (9) times within the 20-year period in accordance with the above-referenced June 2004 plan. Timing of monitoring report preparation and submittal will be determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The U.S. Army Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(G) The permittee shall be responsible for the successful restoration, enhancement and preservation of stream and riparian corridors to offset 21 linear miles impacted within the reservoir area, consistent with the mitigation credit ratios proffered for stream restoration, enhancement and preservation in the above-referenced June 2004 plan. The U.S. Army Corps of Engineers may authorize the use of stream credits from approved mitigation banks or other stream segments not identified in the above-referenced plan to complete the stream mitigation requirements. Any deviations which would result in lesser areas of successful stream mitigation must be approved in advance in writing by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The permittee will coordinate with the U.S. Army Corps of Engineers to determine appropriate stream mitigation credit for fish passageway mitigation requirements listed in the Virginia Department of Environmental Quality Water Protection Permit/Water Quality Certificate referenced below.

(H) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed streams mitigation plan, for review and written approval by the Corps of Engineers in consultation with the Interagency Mitigation Team. The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein until the final detailed streams mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (I) below and include the following items at a minimum:

a) detailed design and planting plans for each stream restoration/ enhancement site, to include an appropriate mix of native species, and target success criteria;
b) erosion control measure installation and removal plans for each stream restoration/enhancement site;

(G) The permittee shall be responsible for the successful restoration, enhancement and preservation of **Corps of Engineers' regulated** stream and riparian corridors to offset **the approximately** 21 linear miles impacted within the reservoir area, consistent with the mitigation credit ratios proffered for stream restoration, enhancement and preservation in the above-referenced June 2004 plan. The U.S. Army Corps of Engineers may authorize the use of stream credits from approved mitigation banks or other stream segments not identified in the above-referenced plan to complete the stream mitigation requirements. Any deviations **from the June 2004 proffered stream mitigation proposal** must be approved in advance in writing by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team **to include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality. The Mitigation Plan should prioritize utilization of wetland mitigation sites in the York River watershed to the maximum extent practicable.** The permittee will coordinate with the U.S. Army Corps of Engineers to determine appropriate stream mitigation credit for fish passageway mitigation requirements listed in the Virginia Department of Environmental Quality Water Protection Permit/Water Quality Certificate referenced below.

(H) The permittee shall provide the U.S. Army Corps of Engineers with a final detailed streams mitigation plan, for review and written approval by the Corps of Engineers in consultation with the Interagency Mitigation Team **to include the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency Region III, the U.S. Fish & Wildlife Service Chesapeake Bay Field Office and the Commonwealth of Virginia Department of Environmental Quality.** The permittee shall not commence any discharges of dredged or fill material into waters of United States as authorized herein until the final detailed streams mitigation plan is approved in writing by the U.S. Army Corps of Engineers. The final detailed plan shall comply with Special Condition (I) below and include the following items at a minimum:

a) detailed design and planting plans for each stream restoration/ enhancement site, to include an appropriate mix of native species, and target success criteria;
b) erosion control measure installation and removal plans for each stream restoration/enhancement site;

c) preservation plans for each stream restoration/enhancement site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
d) financial assurances for the successful completion of the minimum required stream restoration/enhancement work; and
e) plans for control of invasive species at the stream restoration/enhancement sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(I) The permittee shall monitor each stream restoration/enhancement site for a five-year period, beginning with completion of the first growing season for each stream restoration/enhancement site upon which construction and/or initial planting has occurred in accordance with the above-referenced June 2004 plan. The permittee shall provide monitoring reports at a frequency and timing to be subsequently determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(J) Within 180 days of the date of issuance of this permit, and in accordance with the small whorled pogonia plant Conservation Recommendation of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner of property identified as New Town Section 8, Parcel ID 38410156, the location of a colony of small whorled pogonia (*Isotria medeoloides*) in James City County, Virginia with the intent of reaching agreement for purchase of a conservation easement area to protect the small whorled pogonia colony. If agreement cannot be reached for a conservation easement on the above referenced property within 180 days of the commencement of negotiations as described above, the permittee shall immediately commence negotiations with the landowner of a private property identified as Parcels 39-1C, 39-208 & 39-201 in Gloucester County, Virginia to preserve an existing small whorled pogonia colony and eight acres of surrounding buffer. The permittee shall submit any proposed easement language to the U.S. Army Corps of Engineers for

c) preservation plans for each stream restoration/enhancement site, including a proposed legal form of preservation (i.e. conservation easement or other appropriate mechanism), description of preservation area, and means of recordation/acceptance by receiving agency/landowner if applicable;
d) financial assurances for the successful completion of the minimum required stream restoration/enhancement work; and
e) plans for control of invasive species at the stream restoration/enhancement sites.

The U.S. Army Corps of Engineers reserves the right to require that the final detailed plan include additional items as necessary, and shall notify the permittee of such requirement in writing prior to the permittee's submission of the final detailed plan.

(I) The permittee shall monitor each stream restoration/enhancement site for a five-year period, beginning with completion of the first growing season for each stream restoration/enhancement site upon which construction and/or initial planting has occurred in accordance with the above-referenced June 2004 plan. The permittee shall provide monitoring reports at a frequency and timing to be subsequently determined by the U.S. Army Corps of Engineers in consultation with the Interagency Mitigation Team. The Corps of Engineers shall notify the permittee in writing of the schedule for submission of monitoring reports.

(J) Within 180 days of the date of issuance of this permit, and in accordance with the small whorled pogonia plant Conservation Recommendation of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion, the permittee shall commence negotiations with the landowner of property identified as New Town Section 8, Parcel ID 38410156, the location of a colony of small whorled pogonia (*Isotria medeoloides*) in James City County, Virginia with the intent of reaching agreement for purchase of a conservation easement area to protect the small whorled pogonia colony. If agreement cannot be reached for a conservation easement on the above referenced property within 180 days of the commencement of negotiations as described above, the permittee shall immediately commence negotiations with the landowner of a private property identified as Parcels 39-1C, 39-208 & 39-201 in Gloucester County, Virginia to preserve an existing small whorled pogonia colony and eight acres of surrounding buffer. **The permittee shall pursue and implement an easement on an**

agencies' coordination, review and approval before any easement is recorded. The permittee shall consult with the U.S. Army Corps of Engineers in the event of negotiation failure.

(K) Within one year of the date of issuance of this permit, the permittee shall submit a draft monitoring plan for the Mattaponi River to the U.S. Army Corps of Engineers for agencies' coordination, review and approval. Said plan shall include provisions for controlling of initial filling of the King William IV Reservoir as a research opportunity, in accordance with sensitive joint-vetch plant Conservation Recommendation B) of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion.

(L) The permittee shall monitor, for a ten-year period, all extant and appropriate historic sensitive joint-vetch sites on the Mattaponi and Pamunkey Rivers in accordance with sensitive joint-vetch Conservation Recommendation C) of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion. The specific monitoring period will be determined by the U.S. Army Corps of Engineers in consultation with the U.S. Fish & Wildlife Service.

(M) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation D) of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination, review and approval before any easement is recorded, a written plan for strict control of invasive species at the Mattaponi River intake site at Scotland Landing, Virginia. The permittee shall immediately notify the U.S. Army Corps of Engineers if the execution of said plan would result in an additional discharge of dredged or fill material into jurisdictional waters of the United States.

an alternate site location, designated by the U.S. Fish & Wildlife Service and Commonwealth of Virginia Natural Heritage if the primary sites are unavailable. The permittee shall submit any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and written approval by the Corps before any easement is recorded.

(K) Within one year of the date of issuance of this permit, the permittee shall submit a draft monitoring plan for the Mattaponi River to the U.S. Army Corps of Engineers for agencies' coordination and review, and **written** approval **by the Corps**. Said plan shall include provisions for controlling of initial filling of the King William IV Reservoir as a research opportunity, in accordance with sensitive joint-vetch plant Conservation Recommendation B) of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion.

(L) The permittee shall monitor, for a ten-year period, all extant and appropriate historic sensitive joint-vetch sites on the Mattaponi and Pamunkey Rivers in accordance with sensitive joint-vetch Conservation Recommendation C) of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion. The specific monitoring period will be determined by the U.S. Army Corps of Engineers in consultation with the U.S. Fish & Wildlife Service.

(M) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation D) of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and **written** approval **by the Corps** before any easement is recorded, a written plan for strict control of invasive species at the Mattaponi River intake site at Scotland Landing, Virginia. The permittee shall immediately notify the U.S. Army Corps of Engineers if the execution of said plan would result in an additional discharge of dredged or fill material into jurisdictional waters of the United States.

(N) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation E) of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination, review and approval, a plan for installation of an appropriate series of buoys and/or markers in the Mattaponi River in the vicinity of the intake site. The plan shall prescribe means for protection of the intake structure from potential damage by passing vessels, and for minimization of boat wake impacts to sensitive joint-vetch plant habitat at Garretts Creek Marsh. The permittee shall also submit all necessary permit applications to secure any necessary federal (Non-U.S. Army Corps of Engineers), state and/or local approvals to perform such work.

(O) Within 180 days of the date of issuance of this permit, and in accordance with the sensitive joint-vetch plant Conservation Recommendation F) of the U.S. Fish & Wildlife Service's February 2, 1998 Biological Opinion, the permittee shall commence negotiations with the landowner(s) of properties containing the Garretts Creek Marsh and Gum Marsh, plus upland buffer areas, with the intent of reaching agreement for land acquisition or purchase of a conservation easement area to protect the sensitive joint-vetch populations. The permittee shall submit a suitable protection plan, including configuration of upland buffers, plus any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination, review and approval before any easement is recorded. The permittee shall consult with the U.S. Army Corps of Engineers in the event of negotiation failure.

(N) No less than one year prior to the date of commencing intake structure construction activities in the Mattaponi River, and in accordance with sensitive joint-vetch Conservation Recommendation E) of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion, the permittee shall submit to the U.S. Army Corps of Engineers for agencies' coordination and review, and **written** approval **by the Corps**, a plan for installation of an appropriate series of buoys and/or markers in the Mattaponi River in the vicinity of the intake site. The plan shall prescribe means for protection of the intake structure from potential damage by passing vessels, and for minimization of boat wake impacts to sensitive joint-vetch plant habitat at **Garnetts** Creek Marsh. The permittee shall also submit all necessary permit applications to secure any necessary federal (Non-U.S. Army Corps of Engineers), state and/or local approvals to perform such work.

(O) Within 180 days of the date of issuance of this permit, and in accordance with the sensitive joint-vetch plant Conservation Recommendation F) of the U.S. Fish & Wildlife Service's **September 18, 1998** Biological Opinion, the permittee shall commence negotiations with the landowner(s) of properties containing the **Garnetts** Creek Marsh and Gum Marsh, plus upland buffer areas, with the intent of reaching agreement for land acquisition or purchase of a conservation easement area to protect the sensitive joint-vetch populations. The permittee shall submit a suitable protection plan, including configuration of upland buffers, plus any proposed easement language for the site to the U.S. Army Corps of Engineers for agencies' coordination and review, and **written** approval **by the Corps** before any easement is recorded. The permittee shall consult with the U.S. Army Corps of Engineers in the event of negotiation failure.

(P) Should bio-fouling mollusks, such as the zebra mussel, become present in the York River, the permittee shall submit to the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, for approval an Operational Plan for installation and operation of a chemical feed system that can apply chemicals within the intake pipe on the river side of raw water pump discharge check valves. The Operational Plan shall detail the proposed chemicals or other measures to be utilized to protect its intake structures from such species, and shall be accompanied by a technical assessment of the potential impact on river habitat and fisheries resources, including a specific assessment for listed species, resulting from activation of the proposed measures. The permittee shall not install or operate this chemical feed system until the U.S. Army Corps of Engineers has notified them in writing that the requirements of Section 7 of the Endangered Species Act of 1973, as amended (Title 16, U.S. Code § 1531 *et. seq.*) have been satisfied and that permission is granted to install and activate the chemical feed system.

(Q) The special conditions of the Commonwealth of Virginia's Water Protection Permit/Section 401 Water Quality Certification are incorporated herein as conditions of this permit. As and when the special conditions of that Certification are modified, this Section 404 permit shall be deemed to conform thereto, and the permittee shall comply with such conditions throughout the life of the project.

(P) Should bio-fouling mollusks, such as the zebra mussel, become present in the York River, the permittee shall submit to the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service, Chesapeake Bay Field Office, for approval an Operational Plan for installation and operation of a chemical feed system that can apply chemicals within the intake pipe on the river side of raw water pump discharge check valves. The Operational Plan shall detail the proposed chemicals or other measures to be utilized to protect its intake structures from such species, and shall be accompanied by a technical assessment of the potential impact on river habitat and fisheries resources, including a specific assessment for listed species, resulting from activation of the proposed measures. The permittee shall not install or operate this chemical feed system until the U.S. Army Corps of Engineers has notified them in writing that the requirements of Section 7 of the Endangered Species Act of 1973, as amended (Title 16, U.S. Code § 1531 *et. seq.*) have been satisfied and that permission is granted to install and activate the chemical feed system.

(Q) The Special Conditions contained in the Commonwealth of Virginia issued Water Quality Protection Permit/Section 401 of the Clean Water Act Water Quality Certificate numbered 93-0902, dated December 22, 1997, last modified January 14, 2000, and with an expiration date of December 22, 2007, are incorporated herein as conditions of this Department of the Army permit in accordance with Section 401(d) of the Clean Water Act. **If the Commonwealth of Virginia changes Special Conditions A-9, A-10, B-4 and B-5, by modification or issuance of a new permit/certificate, they will not become conditions of this Department of the Army permit until the Corps formally modifies it. The existing Special Conditions shall remain in effect until such Department of the Army permit modification occurs, as appropriate.**

(R) The permittee shall comply with all stipulations and requirements of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", a copy of which is attached to this permit. To facilitate such compliance, the permittee shall regularly consult with a Cultural Resources Programmatic Agreement Implementation Team to include the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, and the Commonwealth of Virginia Department of Historic Resources with optional participation by representatives of the Mattaponi, Upper Mattaponi, and Pamunkey Native American Tribes.

(S) In addition to the financial requirements set forth in the Memorandum of Agreement referenced in Special Condition (R) above, and in accordance with Title 33 of the Code of Federal Regulations, § 326.4 (c) plus the authority in Section 9701 of Public Law 97-258 (Title 31, U.S. Code § 9701), the permittee shall reimburse the U.S. Army Corps of Engineers the costs of compliance and enforcement related to this permit.

(R) The permittee shall comply with all stipulations and requirements of the "Memorandum of Agreement Among the United States Army Corps of Engineers, the Virginia Department of Historic Resources, and the Advisory Council on Historic Preservation for Treatment of Adverse Effects to Historic Properties Affected by the Construction and Development of the King William Reservoir, King William County, Virginia", a copy of which is attached to this permit. To facilitate such compliance, the permittee shall regularly consult with a Cultural Resources Programmatic Agreement Implementation Team to include the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, and the Commonwealth of Virginia Department of Historic Resources with optional participation by representatives of the Mattaponi, Upper Mattaponi, and Pamunkey Native American Tribes.

(S) In addition to the financial requirements set forth in the Memorandum of Agreement referenced in Special Condition (R) above, and in accordance with Title 33 of the Code of Federal Regulations, § 326.4 (c) plus the authority in Section 9701 of Public Law 97-258 (Title 31, U.S. Code § 9701), the permittee shall **hire a third-party contractor (or contractors) approved by and answerable to the U.S. Army Corps of Engineers. The permittee shall pay for the costs of field work of said contractor(s) in support of permit compliance and enforcement efforts for this permit to include, at a minimum, field-checking and reviewing the final detailed wetlands and streams mitigation plan and cultural resource treatment plans, and inspecting the project site, mitigation sites and cultural resource sites. Said contractor(s) shall advise the Corps as to the permittee's compliance or non-compliance with the terms and conditions of the permit, including those pertaining to wetlands and streams mitigation and compliance with the cultural resources Programmatic Agreement.**